P. V. ATHIMOOLAM CHETTIAR v. S. A. ATHAMSAH & CO.

[Civil Juris. on Reference (Willan, C.J.) October 28, 1946]

Rent and Charged Land (Restriction) Enactment 1940 — Whether term "landlord" includes a tenant who has sublet premises to a sub-tenant — Whether permission of Rent Assessment Board is a prerequisite to application to Court by such tenant to eject his sub-tenant — Civil Procedure Code, Sections 571 and 573.

This was a reference by the District Judge at Kuala Lumpur made under Section 571 of the Federated Malay States Civil Procedure Code as to whether

(a) in the Rent and Charged Land (Restriction) Enactment, 1940, the term "landlord" includes a tenant who has sub-let premises, to which the Enactment applies, to a sub-tenant, and

(b) whether the permission of the Rent Assessment Board under Section 7 of the said Enactment is a prerequisite to an application to the Court by such tenant to eject his sub-tenant.

Held. (1) that the word "landlord" in the Rent and Charged Land (Restriction) Enactment 1940, includes a tenant where such tenant has rightfully sublet; and

(2) that such tenant must obtain the permission of the Rent Assessment Board before he can take any step to eject his sub-tenant.

REFERENCE UNDER SECTION 571 OF THE CIVIL PROCEDURE CODE.

Cases referred to :—

(1) *Oakley v. Wilson* (1927) 2 K.B. 279.

(2) *Churchward v. Ford* (1857) 2 H. & N. 446.

(3) *Ramasamy Chettiar v. Teung Tze Meng* (1946) 12 M.L.J. 13.

Marjoribanks for the Plaintiff.

R. Ramani for the defendant.

Willan, C.J. :—This is a reference by the District Judge at Kuala Lumpur made under section 571 of the Federated Malay States Civil Procedure Code (cap. 7) as to whether :—

(a) in the Rent and Charged Land (Restriction) Enactment, 1940, the term "landlord" includes a tenant who has sub-let premises, to which the Enactment applies, to a sub-tenant, and

(b) whether the permission of the Rent Assessment Board under section 7 of the said Enactment is a prerequisite to an application to the Court by such tenant to eject his sub-tenant.

Under section 573 of the Civil Procedure Code the parties were asked whether they wished to be heard on this reference in person or by counsel, and both of them intimated that they did not wish to be so heard. As this reference is of some importance and as, I understand, a number of cases already filed in the District Court at Kuala Lumpur are pending and awaiting the decision of this reference, it was arranged that Mr. Marjoribanks, Advocate and Solicitor, should appear as an *amicus curiae* for the plaintiff and Mr. Ramani, Advocate and Solicitor, similarly for the defendant. Accordingly Mr. Marjoribanks argued that the term "landlord" in the Rent and Charged Land (Restriction) Enactment, 1940, does not include a tenant who has sub-let to a "sub-tenant", and Mr. Ramani argued contra. I am grateful to them both for their assistance in this matter.

By section 3 of the Rent and Charged Land (Restriction) Enactment, 1940, "landlord", "premises" and "tenant" are defined as follows :—

> "landlord" includes in relation to any premises any person other than the tenant or any one claiming through him who is or would but for this Enactment be entitled to possession of the premises;
>
> "premises" means any dwelling house flat factory warehouse office counting house shop school and any other building in which persons dwell or area employed for work and any part of any premises let separately and the land on which any moveable building falling within the definition of premises stands but does not include any property of Government;
>
> "tenant" and tenancy" include "subtenant" and "subtenancy" and "tenant" also includes the widow of a tenant dying intestate who was residing with him at the time of his death.

It is significant that the word "premises" includes "any part of any premises let separately".

The long title to the Enactment states that one of its objects is to restrict the increase of rent, but another of the main objects of the Enactment, namely the restriction on the ejectment from premises, has been omitted from the long title.

The principal provisions of the Enactment are contained in section 5 (the prohibition on the increase of rent without the permission of the Rent Assessment Board), section 6 (the power of the Rent Assessment Board to fix the rent of premises on the application of a landlord or tenant), section 7 (obtaining the permission of the Rent Assessment Board before a landlord can take ejectment proceedings), and section 8 (the privilege of a tenant to deduct from his rent payable to his landlord any sum which he, the tenant, has paid to his landlord over and above rent, in consideration of "the grant renewal continuance surrender or giving up of a tenancy").

In construing a statute one of the cardinal rules of interpretation is to consider the mischief which existed and which it was intended to remedy. The Rent and Charged Land (Restriction) Enactment was enacted in 1940 and it is obvious, that like the Increase of Rent and Mortgage Interest (Restriction) Acts enacted in England during the 1914-1918 war, it was enacted because it was considered advisable to limit the powers of landlords of certain premises to raise the rent and recover possession of their property. As regards this it is common knowledge that in all the larger towns of Malaya it is the practice for the owner of premises to rent the whole or part of such premises to a tenant and for such tenant to sub-let to another person a portion of the part of the premises let to him by the head landlord.

Accordingly I approach this matter with this cardinal rule of construction uppermost in my mind, that is that the provisions of this Enactment are intended to restrict the powers of landlords to raise the rents of premises and also to prevent tenants being ejected therefrom.

As stated in the case of *Oakley v. Wilson*[1] :—

> **The relation of landlord and tenant in its ordinary legal significance arises whenever one party confers on another the right to exclusive possession of premises, e.g. a dwelling-house, for a time which is either subject to a definite limit originally, as in the case of a lease for a term of years, or which though originally indefinite can be made subject to a definite limit by either party, as in the case of a tenancy from year to year, or a quarterly, monthly, or weekly tenancy. This relation is created by contract to which there is usually, though not necessarily incident, a right on the part of the landlord to receive from the tenant payment for the use of the premises in the shape of rent. 'The word "landlord" does not mean the lord of the soil, but the person between whom and the tenant the relation of landlord and tenant exists': per Bramwell B. in Churchyard v. Ford[2]. The relation of landlord and tenant is of course fully established only when the tenant has entered on the premises let.**

In the light of that I propose to examine the definition of the word "landlord' in the Rent and Charged Land (Restriction) Enactment, 1940, to see whether there is anything in that definition which takes it out of the ordinary meaning of "landlord" as described in *Oakley v. Wilson* (supra).

In the definition in the Rent and Charged Land (Restriction) Enactment, 1940, "landlord" includes only those persons who would be entitled to possession of premises (which also includes any part of premises) but for the existence of the Enactment. Accordingly, it does not include any person in possession of those premises or any part thereof. Now if an owner of a dwelling-house lets the whole of that house to a tenant, he, the owner, is out of possession and is clearly the landlord of that tenant. If the tenant sub-lets to another person the ground floor of those premises, retaining for his own use the first floor, then the tenant is out of possession of the ground floor, because it would be in the possession of that other person, and therefore, according to the definition of "landlord" in the Enactment, the tenant would be the landlord of the person to whom he had let the ground floor and who was actually in possession of the ground floor. This could be taken further if the person in possession of the ground floor, who is really the sub-tenant, further sub-sub-let one or more rooms on the ground floor.

Therefore, in construing the definition of "landlord" in section 3 of the Rent and Charged Land (Restriction) Enactment, 1940, it is essential to bear in mind that a landlord is a person who is entitled to possession of premises but is out of possession, and a tenant is a person in possession of the premises. Besides being in possession of the premises a tenant is also entitled to possession thereof, and therefore on that account alone, it is necessary to exclude him and any one claiming through him from that definition.

But when a tenant sub-lets part of the premises, if permitted to do so by the contract with his own landlord, that tenant ceases to be in possession of the part sub-let, though he is entitled to possession of such part, and therefore he becomes a landlord of the part sub-let, and accordingly becomes a landlord under the Enactment.

If this were not so, several inequities would arise under the Enactment. For instance whilst the head landlord cannot increase his rent without the permission of the Rent Assessment Board, his tenant, who is paying a reasonable rent to that landlord, would be able to increase the rent of his sub-tenant without restriction. It is true that the sub-tenant could apply to the Rent Assessment Board under section 6 for his rent to be fixed, but this application could only be made after an injustice had been done. Further, under section 8, a tenant could demand consideration over and above the rent for renewing the tenancy of his sub-tenant, and the sub-tenant, having no option but to pay in order to keep a roof over his head, would have no right to deduct the sum obtained illegally from the rent due from him to the tenant, whereas the tenant, in similar circumstances, would have the right to deduct from the rent due from him to his landlord.

Lastly, but not least, a tenant would be able to "squeeze" any sub-tenant of his if he, unlike the head landlord, need not obtain the permission of the Rent Assessment Board before ejecting his sub-tenant.

The case of *Ramasamy Chettiar v. Teung Tze Meng*[3] has been brought to my notice in which the learned Judge said :—

> It has been argued on behalf of the landlord that "his" means that there must be an immediate relation of landlord and tenant and that the relation between the landlord and the sub-tenant of his tenant cannot be described as "his". I do not think the word "his" has any technical meaning and I do not suppose that the draftsman intended to introduce a technicality.

In view of my decision on this reference that the word "landlord" in the Enactment must mean the immediate landlord of a person, I am unable to agree with the learned Judge in that case that the word "his" has no technical meaning. Since I have ruled that there must be immediate relationship of landlord and tenant and that such a relationship does exist between a tenant and his sub-tenant, the reason why the draftsman used the word "his" in section 7 becomes apparent.

Accordingly on the reference I rule :—

(a) That the word "landlord" in the Rent and Charged Land (Restriction) Enactment, 1940, includes a tenant where such tenant has rightfully sub-let; and

(b) That such tenant must obtain the permission of the Rent Assessment Board before he can take any step to eject his sub-tenant.

Reference answered accordingly.

KEDAH REPORT.

TAN CHOOI SIAK
vs.
ABDULLAH BIN HAJI DRASHID.

[App. Civil Jurisdiction (McElwaine, C.J., S.S., Aitken, Ag. J.A. and Carey, J.) September 13, 1941]

Kedah Courts Enactment, Section 11 — Evidence Ordinance (S.S.) Sections 91, 92 and 93 — Parol evidence to vary terms of written document — Conditional sale of land — Where no time fixed in agreement for repurchase, it must be done within a reasonable time.

By an agreement in writing made between them the defendant sold conditionally to the plaintiff two pieces of rubber estate (which he had earlier bought from the plaintiff) for $1,000/-. It was further agreed that so long as the defendant did not repurchase the land, the output of rubber and the coupons were to be transferred to the plaintiff as his own property. The agreement contained a clause:—

> "No heirs or agents of mine (i.e. the defendants) shall prohibit or forbid Towkay Tan Chooi Siak from this date onwards for the period of ten years. If Abdullah is unable to repay the sum of $1,000/- to Towkay Tan Chooi Siak, I Abdullah agree to come down to execute a bond transferring absolutely the said rubber land to Towkay Tan Chooi Siak without any further question or answer."

It appeared that the transaction between the parties was as follows:—The defendant purchased the two pieces of land from the plaintiff for $2,000/-. He gave a charge to the plaintiff for $1,000/- on an entirely different piece of land. The charge could not be registered and so the parties prepared and signed the document under consideration.

The plaintiff sued for specific performance of the agreement. The making of the agreement was admitted but the defendant gave evidence that before the ten years had expired he offered to pay but the plaintiff refused to accept the money till the ten years had expired. The defendant further gave evidence that when the period of ten years had expired he again offered to settle but the plaintiff refused.

Before the Court of Appeal, the main point argued was that as the plaintiff was suing for specific performance, the defendant was entitled to give parol evidence to show that the document did not set out the real agreement. No decision on this point was however given by the Court of Appeal, and the case was decided on a narrower point.

Held, that as the agreement sued on fixed no time for repurchase, the repurchase must be effected within a reasonable time and as the money was in fact tendered within a reasonable time after the expiration of the ten years' enjoyment of the profits of the land, the defendant-respondent was entitled to the return of the lands on payment of the agreed repurchase price.

Cases referred to:—

(1) *Haji Osman v. Ng Ah Siew* 8 M.L.J. 247.

(2) *Price v. Ley* 32 L.J. Ch. 530.

(3) *Woolam v. Hearn* 7 Ves. 211.

(4) *In re Duke of Marlborough, Davis v. Whitehead* (1894) 2 Ch. 133.

(5) *Lincoln v. Wright* 4 De G. & I. 16.

(6) *Haigh v. Kaye* L.R. 7 Ch. App. 469.

(7) *Clarke v. Grant* 14 Ves. 519.

(8) *Joynes v. Statham Note to Townshend v. Stangroom* 6 Ves. 335.